

## SUBORDINATE MORTGAGE

STATE OF ALABAMA     )  
                                  )  
SHELBY COUNTY         )

**THIS SUBORDINATE MORTGAGE**, made and entered into as of the 30th day of December, 1996, by and between **HUBERT W. GOINGS, JR.**, a married man, (herein called "Mortgagor") and **COMMUNITY COLLEGE DEVELOPMENT CO., INC.**, a corporation (herein called "Mortgagee").

### WITNESSETH:

**WHEREAS**, simultaneously with the delivery of this mortgage, Mortgagor has purchased an undivided twenty eight and seventy five one hundredths percent (28.75%) interest the real estate described herein and become justly indebted to Mortgagee in the principal sum of Eighty Six Thousand Two Hundred Fifty and No/100 Dollars (\$86,250.00), evidenced by one promissory note (the "Notes" or "Note") dated December 30, 1996, given as a part of the purchase price of the real estate described herein; and

**WHEREAS**, Mortgagor is desirous of securing the prompt payment of said Note and the interest therein provided for, and any additional indebtedness accruing to Mortgagee on account of any future payments or expenditures made by Mortgagee pursuant to this Mortgage; and

**NOW, THEREFORE**, the undersigned, in consideration of the premises, One Dollar (\$1.00) in hand paid by Mortgagee to Mortgagor, the receipt and sufficiency of which are acknowledged, to secure the prompt payment of the aforesaid indebtedness, with the interest thereon, and any further sum or sums for which Mortgagor may hereafter become indebted to Mortgagee, pursuant to the terms hereof and further to secure the performance of the covenants, conditions and agreements hereinafter and in said note set forth, Mortgagor has bargained and sold and hereby grants, bargains, sells, assigns and conveys to Mortgagee, its successors and assigns, the following described real estate, lying and being in the County of Shelby, State of Alabama, to wit:

An undivided twenty eight seventy five one hundredths percent (28.75%) interest in and to:

Parcel I:

Lot 3, according to the Survey of Village of Valleydale at Southlake, as recorded in Map Book 11, Page 84, in the Probate Office of Shelby County, Alabama.

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Parcel II:

Easement for the benefit of Parcel I as created by Declaration of Restrictions and Grant of Easements dated February 29, 1988 and recorded in Real 173, Page 355 and Indenture of Establishment of Protective Covenants, conditions and restrictions, and grant of easements dated February 29, 1988 and recorded in Real 173, Page 364 for the purpose described in these Easements over, under and across Lots 1 and 2, with respect to Real 173, Page 355 and Lot 4, with respect to Real 173, Page 364. Subject to terms, provisions and conditions set forth in said instrument.

NOTE: No part of the property herein conveyed constitutes the homestead of the Mortgagor or his spouse.

Subject to:

1. Taxes and assessments for the year 1997, and subsequent years, which are not yet due and payable.
2. Restrictions appearing of record in 182, Page 1, in the Probate Office of Shelby County, Alabama.
3. Right of Way granted to Alabama Power Company by instrument recorded in Real 224, Page 644, in the Probate Office of Shelby County, Alabama.
4. Easement, recorded in Real 173, Page 329 and Real 228, Page 590, in the Probate Office of Shelby County, Alabama.
5. Right of way to Alabama Power Company, recorded in Volume 219, Page 734, in the Probate Office of Shelby County, Alabama and as shown by Coulter, Gay, Salmon and Martin, dated February 17, 1988.
6. Declaration of protective covenants and restrictions as recorded in Real 153, Page 395 and Real 173, Page 304 in the Probate Office of Shelby County, Alabama.
7. Declaration of restrictions and grant of easements as recorded in Real 173, Page 355 in the Probate Office of Shelby County, Alabama.
8. Indenture of establishment of protective covenants, conditions, and restrictions and grant of easements as recorded in Real 173, Page 364 in the Probate Office of Shelby County, Alabama.
9. Mortgage securing sum of \$3,834,000.00 from Fairway Investments, Inc. to Fleet National Bank, recorded on December 31, 1991 in Real 380, Page 502, in the Probate Office of Shelby County, Alabama.
10. Cotenancy Agreement dated December 30, 1996 between Fairway Investments, L.L.C. and Hubert W. Goings, Jr. recorded at Instrument # 997-00003 in the Probate Office of Shelby County, Alabama.

Together with all improvements thereon the "property" the "premises" or the "mortgaged property".

**TO HAVE AND TO HOLD** the said premises, and every part thereof, unto Mortgagee, its successors and assigns, forever, subject, however, to all easements and restrictions now of record. Subject to the above-described first mortgage lien, Mortgagor covenants with Mortgagee that he is lawfully seized of said premises and has a good right to sell and convey the same as aforesaid; that the said premises are free of all encumbrances except as herein set out, and Mortgagor will warrant and forever defend the title to said premises unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

This Mortgage is made and accepted on the understanding that the following covenants, conditions and agreements shall continue in effect so long as any portion of the indebtedness hereby secured remains unpaid, to wit:

(1) The Mortgagor will pay all indebtedness secured hereby whether presently existing or hereafter incurred.

(2) That, for the benefit of Mortgagee, Mortgagor will pay his pro rata share of fire and extended coverage insurance policies with respect to any and all buildings on said premises, such insurance to be provided in such manner and in such companies and for such amounts as may be reasonably required by Mortgagee, with the loss, if any, payable to Mortgagee as its interest may appear, and if the Mortgagor fails to keep said property insured as above specified then Mortgagee may, at its option, insure said property for its insurable value against loss by fire and other hazards, casualties and contingencies, for their own benefit, and any amount which may be expended for Mortgagor's share of the premiums on such insurance policies shall be secured by the lien of this Mortgage and bear interest at the legal rate from the date of payment by Mortgagee.

(3) That said premises and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon, natural wear and tear excepted, and Mortgagor will pay his pro rata share of all taxes and assessments or other charges which may be levied upon or accrue against said premises, as well as his pro rata share of all other sums which may be or become liens or charges against same.

(4) That any lien which may be filed under the provisions of the statutes of Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged by Mortgagor to the extent of Mortgagor's pro rata share and shall not be permitted to take priority over the lien of this Mortgage, provided that Mortgagor, upon first furnishing to Mortgagee reasonable security for the payment of all liability, costs and expenses of the litigation, may in good faith contest, at Mortgagor's expense, the validity of any such lien or liens. In those instances where Mortgagee's title policy protects it against such lien or liens such title policy shall be deemed to be sufficient security.

(5) That any and all legal requirements, of any department of the city wherein said premises are located, shall be fully complied with by Mortgagor within ten (10) days after notice of such requirement shall have been given by Mortgagee to Mortgagor, and the mailing of a written

notice, or demand, direct to the last known address of the Mortgagor, prepaid postage, shall be sufficient notice in any case arising hereunder.

(6) If Mortgagor fails to pay his pro rata share of all or any part of the taxes or assessments levied, accrued or assessed upon or against said property, or fails to pay his pro rata share immediately and discharge any and all liens, debts, and/or charges which might become liens superior to the lien of this Mortgage, Mortgagee may, at its option, pay said pro rata share of such taxes, assessments, debts, liens and/or charges, and any money which Mortgagee shall have so paid or become obligated to pay shall constitute a debt to Mortgagee additional to that debt hereby specially secured, shall be secured by this Mortgage, shall bear interest at twelve percent (12%) per annum from the date paid and, at the option of the Mortgagee, shall be immediately due and payable.

(7) No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured shall be taken or construed as a waiver of their right to exercise such option or to declare such on the part of Mortgagor; and the procurement of insurance or the payment of taxes or other liens, debts, or charges by Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, debts, liens or charges.

(8) Mortgagor agrees to pay a reasonable attorney fee to Mortgagee should the Mortgagee employ an attorney to collect any indebtedness secured by this Mortgage.

(9) As additional security for the indebtedness secured by this Mortgage, Mortgagor hereby assigns, transfers and sets over to Mortgagee, effective upon Mortgagor's default under the terms of this Mortgage or the Note secured by this Mortgage, all his interest in the leases of any part of the real estate described herein, together with his share of all the rents, issues and profits now or hereafter due under or by virtue of said leases. If Mortgagor shall make default in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof, Mortgagee may proceed to collect Mortgagor's pro rata share of the rent, income and profits from the premises, either with or without the appointment of a receiver; any rents, income and profits collected by Mortgagee pursuant to this paragraph, less the cost of collecting the same, including any real estate commission or attorney's fee incurred, shall be credited first to advances with interest thereon, then to interest due on the principal indebtedness, and the remainder, if any, to the principal debt hereby secured.

(10) It is further agreed that if Mortgagor shall fail to pay, or cause to be paid, the whole or any portion of the principal sum, or any installment of interest thereon, or any other sum the payment of which is hereby secured, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein contained, or should default be made in the payment of any mechanic's lien, materialmen's lien, insurance premiums, taxes or assessments now, or which may hereafter be, levied against, or which may become a lien on, said property, or should default be made in any of the covenants, conditions and agreements herein contained, and if such default is not cured within ten (10) days after such default, then and in that

event the whole of said principal sum, with interest thereon, and all other sums secured hereby, shall, at the option of the then holder of said indebtedness and without notice, be and become immediately due and payable and the holder of the debt hereby secured shall have the right to enter upon and take possession of said property and after, or without, taking such possession of the same, sell the mortgaged property at public outcry, in front of the courthouse door of the county wherein said property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week or three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagees or any person conducting said sale for them is authorized and empowered to execute to the purchaser at said sale a deed to the property so purchased in the name and on the behalf of Mortgagor, and the certificate of the holder of the mortgage indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises, or the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages, the Mortgagee, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of said property if the highest bidder therefor. The proceeds of any such sale shall be applied (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable attorney's fee for such services as may be, or have been necessary in any one or more of the foreclosure of this Mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end; (b) to the payment of whatever sums or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this Mortgage, together with interest thereon; (c) to the payment and satisfaction of said principal indebtedness and interest thereon on the day of sale; and (d) the balance, if any, shall be paid over to Mortgagor, or Mortgagor's successors or assigns. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

(11) It is expressly agreed that any indebtedness at any time secured hereby may be extended, rearranged or renewed, and that any part of the security herein described may be waived or released without in anywise altering, varying or diminishing the force, effect or lien of this instrument; and this instrument shall continue as a lien on all of said lands and premises and other property and rights covered hereby and not expressly released until all sums with interest and charges hereby secured are fully paid; and no other security hereafter taken to secure the payment of said indebtedness or any part thereof shall in any manner be impaired or affected by the execution of this instrument; and no security subsequently taken by Mortgagee or other holder or holders of said indebtedness shall in any manner impair or affect the security given by this instrument; and all security for the payment of said indebtedness or any part thereof shall be taken, considered and held as cumulative.

(12) Mortgagor agrees for itself and any and all persons or concerns claiming by, through or under Mortgagor, that if it or any one or more of them shall hold possession of the above-described property or any part thereof subsequent to foreclosure hereunder, it or the parties so holding possession, shall become and be considered as tenants at will of the purchaser or purchasers

at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for reasonable rental of said premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any tenant as a result thereof being hereby expressly waived.

(13) Provided always that if Mortgagor pays the indebtedness secured by this Mortgage, and reimburse Mortgagee, its successors and assigns, for any amounts they may have expended pursuant to the authorizations contained in this Mortgage, including without limitation, sums spent in payment of the Mortgagor's pro rata share of taxes, assessments, insurance or other liens and interest thereon, and shall do and perform all other acts and things herein agreed to be done, this conveyance shall be null and void; otherwise it shall remain in full force and effect.

(14) Singular or plural words used herein to designate the Mortgagor shall be construed to refer to the maker or makers of this Mortgage, whether one or more persons or a corporation, and all covenants and agreements herein contained shall bind the personal representatives, successors and assigns of the Mortgagor, and every option, right and privilege herein reserved or secured to Mortgagee shall inure to the benefit of its successors and assigns.

(15) The unenforceability or invalidity of any provision or provisions of this Mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to those provided by law.

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage as of the date first above written.

**"Mortgagor"**

  
HUBERT W. GOINGS, JR.

**[ACKNOWLEDGMENT ON F O L L O W I N G P A G E]**

STATE OF ALABAMA     )  
                                      )  
JEFFERSON COUNTY     )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **HUBERT W. GOINGS, JR.**, an individual, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, executed the same voluntarily on the day the same bears date.

Given under my hand seal this 30<sup>th</sup> day of December, 1996.

[NOTARIAL SEAL]

Kathy R. Blunder  
Notary Public  
My Commission Expires: May 25, 1999

THIS INSTRUMENT PREPARED BY:

W. Howard Donovan, III, Esq.  
Johnston & Conwell, L.L.C.  
800 Shades Creek Parkway  
Suite 325  
Birmingham, Alabama 35209

Send Tax Notice To:

Hubert W. Goings, Jr.  
O/O THOMPSON TRACTOR CO.  
2401 PINSON HIGHWAY  
B'ham, AL

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